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Microsoft Settlement: Not Strong Enough

There have been many essays already written that point to the weaknesses of the current Microsoft antitrust settlement. Many of the weaknesses are the same as those present in the original consent decree, Microsoft's noncompliance with which the Justice Department had to spend so much effort in court trying to establish: it mainly told Microsoft to start obeying the law, without penalties or damages for past violations, and even then contained loopholes that rendered it ineffective. (Some columnists have even raised the specter of new immunities from antitrust law as long as Microsoft is careful to keep to the letter of the settlement while exploiting its loopholes.) I won't go into those arguments, except to state that the settlement is widely viewed as a win for Microsoft, even though court's decision largely sided with the Justice Department. There are additional arguments I could make, but I'll choose just one: the implication that a settlement such as this is good for the economy, better for it than if the Justice Department had kept on fighting.

On the day the settlement was announced, people from the Justice Department implied and Microsoft executives explicitly stated that given the state of the economy, it was the right thing to do. The clear implication was that what's bad for Microsoft would be bad for the economy. Therefore, being tough on Microsoft would worsen the outlook for everyone. This assumes that the economy exists largely inside Microsoft. In fact, I can think of few things worse for the economy than an uncontrolled monopoly over something so crucial to American businesses as computers.

It's in Microsoft's best interest to keep their status quo, which in its eyes is a monopoly based on the Windows platform. The "duty-to-the-shareholders" rule goes so far as to state that it's irresponsible to do otherwise. As long as the monopoly holds, there is no incentive to expend money and effort improving quality (and even the incentive of attracting paid upgrades is fading because of recent subscription-based approaches) and there is not much incentive to hold prices down. It doesn't matter if millions or even billions of dollars are spent by other businesses on Windows where new technologies might cut that overhead. It's also much safer for Microsoft to quash new technologies if at all possible, or at least remake them as Windows-centric, that risk giving up the advantage of owning Windows. Microsoft's attempt to covertly make Sun's platform-independent Java language Windows-specific, and then their creation of the extremely similar C# language and .NET platform when the previous approach failed for

legal reasons, makes a good example. As the court findings stated the clearly, new technologies (such as Netscape's browser and Sun's Java) threatened change, which for Microsoft meant reduced reliance on the Windows platform. It was Microsoft's job to snuff them out. Similarly, when they cross the line it is the government's job to enforce the law and punish those who break it, especially when just about everyone else has been harmed.

Untold thousands of business decisions have been and will continue to be made based on Microsoft's aura of invincibility and inevitability. My instructor in a Microsoft Windows NT Server certification class started things off by saying that the way he saw things, Microsoft's products were going to be dominant over at least the next decade, whether any of us liked it or not, so if we wanted to work on computers we would have to learn the products. It would be a practical necessity. In corporations, IT directors don't want to be responsible for choosing a product that is later extinguished by Microsoft, even if it has some advantages over Microsoft's offering. They want to bet on a winner. And the smarter software companies, in their planning meetings, don't even try to make a product that Microsoft could classify as a competitive threat. They saw what happened to earlier competitors, and then they saw what happened to Netscape.

Many of these people don't believe that Microsoft makes the best products. They think that Microsoft will do what it wants, legal or otherwise, and don't think the government will stand up to Microsoft. And judging by results, so far they'd be right. That's why the current perception of the settlement as a Microsoft win so tragically undermines the legal victory. But what about that unspoken assumption that punishing Microsoft would hurt others too? If there were a harsher penalty and actual competition were restored, Microsoft's "ecosystem" of resellers, trainers, consultants, and other vendors would still survive -they would use whatever tools were available in the marketplace. And life would still go on for the IT directors, the consumers, and the software vendors. Life would go on, but might well be better, since they now had options that weren't available to them before.

Microsoft's best products have come as a result of competition. When they were pushed to compete, as they were for a time with Netscape, they produced a good browser. But take away the competition, and the product stagnates. The court's findings detail the extra steps Microsoft took to ensure Internet Explorer's dominance. I've noticed the same cycle of rapid improvement, dealings to remove the competitor, and sudden neglect with other products dating back into the 80s. (The history of Microsoft's Macintosh QuickBASIC is an example.) If there is no one left to compete with Microsoft, where will Microsoft's incentive be to improve at all? The future of computer technology in every business and millions of people's lives may depend on whether

that question has an answer. That's why whatever settlement is worked out with Microsoft must do more than the current proposal.

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